IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY

NOTICE OF MOTION NO.65 OF 2006
IN
INSOLVENCY PETITION NO.74 OF 2001

Re : Mahendra H. Mahtani. ...Insolvent.
Ex-parte:
ICDS Ltd. ...
Petg. Creditor.
And
Tanuja Mahendra Mahtani & Ors. ...Respondents.
And
The Official Assignee. ...Additional Respondent.

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Mr. G.R. Mehta for the Petitioning Creditor.
Mr.U. J. Makhija i/b. Mr. P.A. Kadam for Respondent Nos.1,2 & 3.
Mr.Y. C. Parikh, Official Assignee present.

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CORAM : DR.D.Y.CHANDRACHUD, J.

September 19, 2006.

P.C.

On 3rd September 2002, an order was passed in the Insolvency Petition, on the basis of Consent Terms. A default was thereafter committed in compliance with the Consent Terms, in terms whereof an order of adjudication ensued on 30th August 2003. The estate and effects of the insolvent stood vested with the

Official Assignee. Sometime in December 2003, the insolvent had furnished the details of his cell phone number to the Petitioning Creditor. On 8th June 2005, the Official Assignee had issued the usual letter for taking inventory and possession of the Insolvent's business and residential premises and fixing a meeting for private examination of the Insolvent on 1st July 2005. It has been stated that attempts were made by the Official Assignee to serve the letter. It was found that the Insolvent was no longer residing at the address Vishambhar Niwas, 11th Road, Khar (West), Mumbai. On 29th June 2005, a meeting was fixed with the Insolvent by the Petitioning Creditor. It has been stated that at the meeting, which was attended by the representative of the Official Assignee, the Insolvent refused to accept service of the letter of the Official Assignee and fled from the scene. All efforts thereafter to trace the Insolvent failed. The Insolvent has been evading service by the Official Assignee. The Insolvent is clearly in breach of his duties under Section 33 of the Presidency Towns Insolvency Act, 1909.

This Motion has been taken out for a disclosure by Respondent Nos.1, 2 and 3, who are respectively the wife and sons of the Insolvent. The disclosure is sought of the whereabouts of the Insolvent including his present business as well as information about the estate, affairs and properties of the Insolvent. An affidavit has been filed in reply on behalf of Respondent Nos.1, 2 and 3 in which it has been stated that the deponents have no information in regard to the whereabouts of the Insolvent. This statement is disputed by the Petitioning Creditor.

Counsel appearing on behalf of Respondent Nos.1 to 3 has stated that his clients would attend the office of the Official Assignee at 11 a.m. on 21st September 2006 and shall disclose all information which is within their knowledge in regard to the dealings and affairs of the Insolvent. There shall, accordingly, be an order in terms of prayer clause (a) of the Motion.

The provisions of Section 34 of the Presidency Towns Insolvency Act, 1909 empower the Court either of its own motion

or at the instance of the Official Assignee or of any creditor, by warrant addressed to any police officer or prescribed officer of the Court, to cause an insolvent to be arrested where it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding examination in respect of his affairs or of otherwise avoiding, delaying or embarrassing proceedings in insolvency against him. In the present case the narration of facts would demonstrate beyond any doubt whatsoever that the Insolvent has absconded and evaded compliance of the requisitions of the Official Assignee with a view to delay and embarrass the proceedings in insolvency taken against him. Accordingly, a direction to the Commissioner of Police, Mumbai, in terms of prayer clause (c) of the Notice of Motion is warranted. There shall be an order in terms of prayer clause (c) with the modification that the period of four weeks shall stand substituted by a period of eight weeks. In so far as prayer clause (d) is concerned, the Official Assignee shall address a letter to the Fifth Respondent to the Motion calling upon the Fifth Respondent to furnish him copies of the entire record with regard

to the Cellphone referred to in the prayer clause including inter alia, the application, billing address, name of user, bills, payment details etc. The Fifth Respondent is directed to make available to the Official Assignee for the present, all the details sought, as aforesaid, for the period between January 2005 until date. There shall be an order in these terms in so far as prayer clause (d) is concerned.

The First, Second and Third Respondents shall thereafter attend before the Official Assignee on 25th, 27th and 29th September 2006 and 3rd October 2006 at 11 a.m. In the event that the further presence of any one or more of the aforesaid Respondents is required thereafter, for a period of one month, the aforesaid Respondents shall comply with the requisitions of the Official Assignee.

The Notice of Motion is accordingly disposed of.

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